

1  
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF NEVADA

4 ROSEMARY VANDECAR,

5 Plaintiff,

6 v.

7 CHARLES DANIELS, *et al.*,

8 Defendants.

Case No. 2:20-cv-2150-GMN-BNW

**SCREENING ORDER**

9  
10 Plaintiff, who is incarcerated in the custody of the Nevada Department of  
11 Corrections (NDOC), has filed an application to proceed *in forma pauperis* (ECF No. 5),  
12 has paid the full filing fee of \$402, has submitted a civil rights complaint pursuant to 42  
13 U.S.C. § 1983 (ECF No. 1-1), and moves for appointment of counsel (ECF No. 1-4). The  
14 Court will deny the motion for appointment of counsel without prejudice. As Plaintiff has  
15 paid the full filing fee, the Court will deny Plaintiff's application to proceed *in forma*  
16 *pauperis* as moot. The Court now screens Plaintiff's civil rights complaint under 28  
17 U.S.C. § 1915A.

18 **I. SCREENING STANDARD**

19 Federal courts must conduct a preliminary screening in any case in which a  
20 prisoner seeks redress from a governmental entity or officer or employee of a  
21 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any  
22 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
23 upon which relief may be granted or seek monetary relief from a defendant who is  
24 immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings, however,  
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1 must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
2 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
3 elements: (1) the violation of a right secured by the Constitution or laws of the United  
4 States, and (2) that the alleged violation was committed by a person acting under color of  
5 state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

6 In addition to the screening requirements under § 1915A, pursuant to the Prison  
7 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the  
8 allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a  
9 claim on which relief may be granted, or seeks monetary relief against a defendant who is  
10 immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to  
11 state a claim upon which relief can be granted is provided for in Federal Rule of Civil  
12 Procedure 12(b)(6), and the court applies the same standard under § 1915 when  
13 reviewing the adequacy of a complaint or an amended complaint. If a complaint is  
14 dismissed under § 1915(e), the court will give leave to amend the complaint with  
15 directions as to curing its deficiencies unless it is clear from the face of the complaint that  
16 the deficiencies cannot be cured by amendment. See *Cato v. United States*, 70 F.3d  
17 1103, 1106 (9th Cir. 1995).

18 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See  
19 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). The court may  
20 dismiss a complaint for failure to state a claim upon which relief may be granted if a  
21 plaintiff fails to allege the "grounds" of his "entitlement to relief." *Bell Atlantic Corp. v.*  
22 *Twombly*, 550 U.S. 544, 555 (2007) (quotation omitted). The complaint must "contain  
23 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
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1 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). The allegations  
2 must cross “the line from conceivable to plausible.” *Id.*, at 680.

3 In making this determination, the court takes as true the allegations of material fact  
4 stated in the complaint, and the court construes them in the light most favorable to the  
5 plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). In doing so, the  
6 Court holds the allegations of a *pro se* complainant to less stringent standards than formal  
7 pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the  
8 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must  
9 provide more than mere labels and conclusions. See *Twombly*, 550 U.S. at 555.

10 Allegations that “are no more than mere conclusions . . . are not entitled to the  
11 assumption of truth.” *Iqbal*, 556 U.S. at 679. “While legal conclusions can provide the  
12 framework of a complaint, they must be supported with factual allegations.” *Id.* Factual  
13 allegations that “amount to nothing more than a ‘formulaic recitation of the elements’ of a  
14 constitutional” claim are conclusory and not entitled to the assumption of truth. *Id.*, at  
15 681.

16 “Determining whether a complaint states a plausible claim for relief . . . [is] a  
17 context-specific task that requires the reviewing court to draw on its judicial experience  
18 and common sense.” *Iqbal*, 556 U.S. at 679. A complaint stops short of the line between  
19 probability and the mere possibility of relief where the facts pled are merely consistent  
20 with a defendant’s liability. *Id.* at 678. A claim is “plausible” if the factual content “allows  
21 the court to draw the reasonable inference that the defendant is liable for the misconduct  
22 alleged.” *Id.* If the factual allegations “do not permit the court to infer more than the mere  
23 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the  
24 pleader is entitled to relief.” *Id.* (citing Fed.R.Civ.P. 8(a)(2)).

1 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte*  
2 if the prisoner's claims lack an arguable basis either in law or in fact. This includes claims  
3 based on legal conclusions that are untenable (e.g., claims against defendants who are  
4 immune from suit or claims of infringement of a legal interest which clearly does not  
5 exist), as well as claims based on fanciful factual allegations (e.g., fantastic or delusional  
6 scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v.*  
7 *Block*, 932 F.2d 795, 798 (9th Cir. 1991).

## 8 **II. SCREENING OF COMPLAINT**

9 In her complaint, Plaintiff sues multiple defendants arising from several different  
10 incidents from February 2018 through November 2020 at the Florence McClure Women's  
11 Correctional Center (FMWCC). ECF No. 1-1 at 1, 11-41. Plaintiff sues Defendants  
12 James Dzurenda (the director of NDOC), Harold Wickham (deputy director of operations  
13 at NDOC), Kim Thomas (deputy director of programs at NDOC), Brian Williams (deputy  
14 director of programs at NDOC), Michael Minev (medical director at NDOC), Dwight Neven  
15 (warden at FMWCC), Renee Baker (warden at FMWCC), William Hutchings (warden at  
16 FMWCC), Jerry Newell (warden at FMWCC), Ronald Oliver (associate warden of  
17 operations at FMWCC), Gabriela Garcie-Najera (associate warden of operations at  
18 FMWCC), Jennifer Nash (associate warden of operations at FMWCC), Lelani Flores  
19 (director of nursing at FMWCC), P. Gang (investigator at FMWCC), J. Jones (investigator  
20 general / supervisor at NDOC), Dario Sanchez (lieutenant at FMWCC), A. Salvage  
21 (lieutenant at FMWCC), Karissa Currier (sergeant at FMWCC), Dean Medeiros (senior  
22 correctional officer at FMWCC), Helen Peterson (caseworker at FMWCC), N. Holston  
23 (caseworker at FMWCC), M. Velesco (correctional officer at FMWCC), A. Trujillo  
24 (correction officer at FMWCC), Rivera (correctional officer at FMWCC), Vanessa

1 Haralson (correctional officer at FMWCC), E. Rojas (correctional officer at FMWCC), M.  
2 Sestrillo (nurse at FMWCC), Dr. Leaks (contract optometrist at FMWCC), M. Moran  
3 (correctional officer at FMWCC), Theresa Wickham (chief of nursing at NDOC), and G.  
4 Baumgras (senior correctional officer at FMWCC). Plaintiff asserts six counts and seeks  
5 monetary, declaratory and injunctive relief. *Id.* at 1, 44-46.

6 The following are Plaintiff's allegations of fact that the Court assumes, for purposes  
7 of screening the complaint, as true.<sup>1</sup> Plaintiff was assigned to the FMWCC law library  
8 from May 28, 2013, until December 20, 2019. ECF No. 1-1 at 14. At times, she was the  
9 only inmate worker. *Id.* Plaintiff was required to submit a written test, be interviewed, and  
10 be approved by the Full Classification Committee. *Id.* Cynthia Ruiz<sup>2</sup> was hired in October  
11 2014 and supervised Plaintiff. *Id.* Plaintiff was removed from this work assignment, and  
12 given a major disciplinary charge, after a drug test with no opportunity for retest. *Id.* at 15,  
13 18. Plaintiff was placed into segregation. *Id.* Plaintiff has a "7-year record of zero  
14 disciplinary history." *Id.* at 16.

15 Plaintiff made several attempts to discuss concerns of escalating abuses and  
16 harassment with Defendants Neven, Oliver, Baumgras, H. Wickham, Nash, Sanchez and  
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18 <sup>1</sup> Plaintiff's 47-page complaint largely consists of conclusory, vague, overly broad, or  
19 argumentative assertions and speculative conjectures. For example, Plaintiff alleges  
20 numerous defendants "used command influence + abuse of power in violation of NDOC  
21 Administrative Regulations (AR), Operational Procedures (OP), by bending / making  
22 rules, memos, + exceptions to manipulate desired outcomes + otherwise escape  
23 detection, manipulate the Prison Rape Elimination Act (PREA) protocols to keep issues +  
reporting pristine, exercised abuses of NDOC's 'firm, fair, + consistent' policy in AR339 –  
Employee Code of Conduct." ECF No. 1-1 at 15. A plaintiff must provide more than mere  
labels and conclusions. See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
The Court has not recited these assertions and speculations as they are not entitled to an  
assumption of truth in determining whether Plaintiff has stated a claim.

24 <sup>2</sup> It does not appear that Ruiz is a defendant in this matter.

1 Salvage. *Id.* at 17. Plaintiff was advised multiple time to continue to report concerns to  
2 Ruiz. *Id.* Plaintiff was told “she wasn’t liked because she was ‘too smart’ and ‘when you  
3 work for a ‘hard ass’ for a long time, word gets around the yard + fells [sic] to you.’” *Id.*  
4 Plaintiff was directed “by Defendants Garcia-Najera + Peterson to, in effect, lie about the  
5 nature of ‘meetings’ Plaintiff was called to.” *Id.*

6 On December 20, 2019, Defendants Oliver and Holston made an entry in Plaintiff’s  
7 NOTIS file “to the effect, ‘this inmate is not in any trouble.’” *Id.* at 18.

8 Plaintiff was placed into a segregated unit known as the “jungle” and placed in a  
9 twelve-person cell. *Id.* at 19. She was kept in the jungle for longer than the 90-day  
10 required period. *Id.*

11 Defendant H. Wickham responded to a grievance filed by Plaintiff. *Id.*

12 Defendant H. Wickham and Plaintiff had a phone call on June 22, 2020, in which  
13 Plaintiff was asked what she wanted by attempting to grieve. *Id.* Wickham stated to  
14 Plaintiff that “he didn’t believe ‘it’ would stand up in court if Plaintiff were to try, and then  
15 stated ‘you will never return to the law library.’” *Id.* at 20. Defendants Nash and Salvage  
16 were present during the phone call. *Id.* Plaintiff’s disciplinary appeal was still under  
17 review by Wickham. *Id.*

18 Defendant Garcia-Najera is supervised by Defendants Williams, Thomas, H.  
19 Wickham, Neven, Baker, Hutchings and Howell. *Id.* at 21. Garcia-Najera holds a  
20 leadership role. *Id.*

21 Plaintiff believes acts toward her are attributable “to a long-standing pattern of  
22 arbitrariness + retaliation against law library Supervisor Ruiz.” *Id.*

23 In August 2020, NDOC officials pulled Administrative Regulation 339 – Employee  
24 Code of Conduct, from the facility, law library and the NDOC website. *Id.* at 22.

1 In September 2020, Garcia-Najera interrupted Plaintiff's scheduled law library  
2 appointment and disrupted the law library when she abused Plaintiff and Ruiz in the  
3 presence of an inmate worker. *Id.*

4 On January 13, 2020, at about 10:15 a.m., Plaintiff was escorted by Franklin to the  
5 custody of Defendant Velasco. *Id.* at 23. Plaintiff assumed she was being transported for  
6 a medical procedure. *Id.* Plaintiff was informed of a request and order for 'probable  
7 cause.' *Id.* Plaintiff provided a urine sample in view of Velasco. *Id.* Velasco has attested  
8 that Plaintiff was in her full view and custody while giving the sample. *Id.* at 25. Plaintiff  
9 did not drink water and was never out of Velasco's custody. *Id.* at 23. Plaintiff did not  
10 know she was going to have to submit a urine sample. *Id.* Plaintiff does not have any  
11 history of substance use or abuse since she has been at FMWCC. *Id.* at 23-24. Plaintiff  
12 was kept in a holding cell until 3:30 p.m. *Id.* at 24.

13 Velasco moved the urine sample to a back room. *Id.* The sample was sent to  
14 Redwood Toxicology Laboratory for analysis. *Id.* Either Velasco or Defendant Currier  
15 received an adverse report from Redwood that the urine sample had a "low creatine"  
16 level. *Id.* Either Velasco or Currier contacted FMWCC medical staff to determine  
17 whether Plaintiff was taking any medications that could contribute to a "low creatine" level  
18 in the urine sample. *Id.* Defendants received a response that Plaintiff was not taking  
19 medications that could affect the outcome. *Id.* Currier wrote a major disciplinary report  
20 against Plaintiff for an MJ44, failure to submit a drug/alcohol test. *Id.*

21 On January 18, 2020, Defendant Baumgras called Plaintiff into a hallway, informed  
22 her of the write-up, and told her that she was to immediately roll up and be placed in  
23 segregation. *Id.* at 24-25.

1 On January 21, 2020, Plaintiff went to a due process hearing conducted by  
2 Defendants Oliver, Holston, and Peterson. *Id.* at 25. No one else participated in this  
3 hearing. *Id.* Defendant Oliver acknowledged an abundance of unreliable urine samples  
4 and resulting MJ44 charges and denied a request for a retest. *Id.* Oliver stated his hands  
5 were tied and that Plaintiff had little chance of “beating this.” *Id.* Oliver asked questions  
6 about Plaintiff’s medical state. *Id.* Plaintiff asserted an error in the procedure because  
7 the regulations reference “medical reasons” rather than “medications.” *Id.* The hearing  
8 ended abruptly. *Id.* Plaintiff was referred to a disciplinary hearing and transferred to  
9 another segregation unit. *Id.*

10 On January 25, 2020, Defendant Medeiros read the disciplinary charge to Plaintiff.  
11 *Id.* Plaintiff pleaded not guilty and requested but was denied a retest. *Id.* at 25-26. On  
12 January 29, 2020, Plaintiff submitted a kite to Medeiros with her list of witnesses. *Id.* at  
13 26. On February 29, 2020, Defendant Rivera removed Plaintiff from her cell and escorted  
14 her to a hearing before Rivera and Sanchez. *Id.* Sanchez was upset that Plaintiff had  
15 requested witnesses and had documentation to refute the write-up. *Id.* Sanchez stated  
16 that he did not get notice of Plaintiff’s witnesses. *Id.* Plaintiff was ordered to return to her  
17 cell and provide copies of the kite, the evidence intended to be used at the hearing, and  
18 questions of prospective witnesses. *Id.* Plaintiff requested a retest and was denied. *Id.*

19 On March 12, 2020, Plaintiff had a disciplinary hearing before Sanchez and Trujillo.  
20 *Id.* Witnesses were questioned but apart from the hearing and Plaintiff. *Id.* No  
21 documentation that Plaintiff had submitted at an earlier hearing was admitted into the  
22 record. *Id.* Sanchez phoned Defendant Flores, in medical, during the hearing. *Id.*  
23 Plaintiff was not allowed to question Flores. *Id.* Plaintiff requested a retest but was  
24 denied. *Id.* Plaintiff was found guilty of an MJ44 violation. *Id.*



1 Plaintiff appealed Sanchez's disciplinary decision. *Id.* at 27. Garcia-Najera  
2 required the grievance to be resubmitted on the asserted, but incorrect, basis that a  
3 document was missing. *Id.* On resubmission, the appeal was denied. *Id.* Plaintiff filed a  
4 second level appeal, which was assigned to Wickham. *Id.* He denied the appeal and did  
5 not provide for a retest of the urine sample or grant any relief. *Id.* at 27-28.

6 NDOC charged Plaintiff restitution in an amount that is almost two and one-half the  
7 rate of the co-pay charged for lab work in the facility medical department. *Id.*

8 Plaintiff's cell was searched on August 14, 2019. *Id.* at 30. A book and Plaintiff's  
9 PTSD journal (both authorized by Dr. Malory) was taken by Defendants Haralson and  
10 Moran into the bubble office and perused. *Id.* Baumgras removed the items to shift  
11 command. *Id.* The PTSD book ended upon on Neven's desk. *Id.*

12 Defendant Peterson made remarks and inquiries about Plaintiff's emotional health.  
13 *Id.* Plaintiff refused to share confidential mental health information. *Id.* Peterson created  
14 and shared a factually untrue communication with staff. *Id.*

15 Neven and Garcia-Jajera asked Dr. Malory to justify why she was seeing Plaintiff.  
16 *Id.* at 31.

17 On at least four occasions between January 2020 and July 2020, Defendants  
18 Neven, Flores, Oliver, Sanchez, and Nash, made inquiries with medical personnel and  
19 shared or interpreted the information regarding Plaintiff's disciplinary charge for a diluted  
20 urine sample. *Id.*

21 Garcia-Najera acted as a grievance coordinator for the associate warden or acting  
22 warden. *Id.* at 32. Peterson acted as a caseworker or PREA designee or acting  
23 grievance coordinator or acting associate warden of programs. *Id.* Garcia-Najera and  
24 Peterson routinely do not accept grievances causing multiple resubmits. *Id.* at 33.

1 Defendants Howell and Garcia-Najera issued a directive on July 30, 2020 to staff  
2 that inmates would no longer be allowed to purchase copies of inmate-related memos, or  
3 NDOC indices for administrative regulation, operational procedures, medical directives, or  
4 minutes of meetings between Howell (or his designee) and the inmate advisory  
5 committee. *Id.* at 34.

6 Plaintiff is required to attach documentation to grievances. *Id.* Plaintiff must know  
7 of and locate a memo but not all memos are posted in all units. *Id.* Plaintiff must then re-  
8 write or transcribe the memo to include it in a grievance. *Id.*

9 When Plaintiff was placed into segregation from January 18, through January 22,  
10 2020, she did not have direct law library or phone access. *Id.* at 36. Plaintiff was  
11 transferred to another segregation unit from January 22, through April 8, 2020. *Id.*  
12 Plaintiff was moved to the “jungle” on April 9, 2020. *Id.*

13 Plaintiff believes the visits that Ruiz, the law library supervisor, made to her while  
14 she was housed in the segregation units were shadowed and monitored by correctional  
15 officers. *Id.* at 37. They reported the interactions and discussions to Garcia-Najera. *Id.*

16 Plaintiff did not know or receive timely information from either the courts or her  
17 advocate of an action taken in her criminal appeal by the Nevada Supreme Court. *Id.*

18 Garcia-Najera installed less-qualified or unqualified workers in the law library. *Id.*

19 Sanchez and Trujillo imposed phone restrictions precluding Plaintiff from her twice-  
20 weekly free phone calls afforded to inmates under an NDOC-wide Covid-19 protocol. *Id.*  
21 The Covid-19 protocol also cancelled attorney visits. *Id.* at 38.

22 In April 2020, the phone restriction made it impossible for Plaintiff to access a  
23 newly appointed attorney. *Id.* The appointed appellate counsel obtained a court-order  
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1 mandating that prison officials provide twice-per-month phone calls in conference with  
2 attorney. *Id.* Plaintiff missed two scheduled calls in August 2020. *Id.*

3 Plaintiff's medical records with NDOC and FMWCC document chronic and serious  
4 medical needs including hypertension, PTSD, asthma, thyroid, and vision. *Id.* at 39.  
5 Plaintiff suffered delays in obtaining an eye exam between October 2018 and July 2019.  
6 *Id.* At an exam, Defendant Dr. Leaks expressed concern that there was significant  
7 damage and that it looked like Plaintiff had another person's eyes since the last visit. *Id.*  
8 During the exam, Dr. Leaks commented, "Maybe you were born this way." *Id.* at 40.  
9 Plaintiff described an increase in headaches, blurred vision, dizziness, and pressure  
10 behind the right eye. *Id.* Dr. Leaks ordered a follow-up exam in 60 days. *Id.* The follow-  
11 up appointment was delayed. *Id.* Plaintiff began grieving the issue on February 6, 2020.  
12 *Id.*

13 On January 18, 2020, Plaintiff did not have her medication for approximately three  
14 weeks. *Id.* On at least two occasions [shortly before submitting her complaint], Plaintiff  
15 has been without medications. *Id.*

16 Eye examinations are scheduled only every two years. *Id.*

17 Based on these allegations, Plaintiff asserts: Count 1, claims for violations of First  
18 Amendment right to free speech and retaliation,<sup>3</sup> and violations of the Fourteenth  
19 Amendment due process and equal protection clauses;<sup>4</sup> Count 2, violations of the

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20 <sup>3</sup> Plaintiff asserts the retaliation claim as a violation of the Eighth Amendment. However,  
21 given Plaintiff's broad assertions she was engaged in protected conduct, the Court will  
22 construe the claim as brought pursuant to the First Amendment.

23 <sup>4</sup> Plaintiff recites each of her Fourteenth Amendment claims as also brought pursuant to  
24 the Fifth Amendment. However, a due process claim against state prison officials is  
25 grounded in the Fourteenth Amendment rather than the Fifth Amendment. See *Castillo v.*  
*McFadden*, 399 F.3d 993, 1002 n.5 (9th Cir. 2005) (holding that "[t]he Fifth Amendment  
prohibits the federal government from depriving persons of due process, while the

1 Fourteenth Amendment due process clause, and violations of the Eighth Amendment  
2 cruel and unusual punishments clause; Count 3, right to privacy and protections under the  
3 Health Insurance Portability Accountability Act (HIPAA); Count 4, violations of the First  
4 and Fourteenth Amendments regarding the prison grievance and appeals process; Count  
5 5, violation of the Fourteenth Amendment due process right to access the courts;<sup>5</sup> and  
6 Count 6, deliberate indifference to serious medical needs in violation of the Eighth  
7 Amendment.

8 The Court liberally construes the Complaint as bringing claims for retaliation in  
9 violation of the First Amendment, for cruel and unusual punishment and deliberate  
10 indifference to serious medical needs in violation of the Eighth Amendment, for due  
11 process and medical privacy guaranteed by the Fourteenth Amendment, and denial of  
12 access to the prison's grievance process and the courts. The Court will address each of  
13 these issues as well as Plaintiff's HIPAA claim.

14 **A. Improper Pleading – Federal Rules of Civil Procedure 8, 10, 18, 20**

15 Plaintiff's 47-page complaint fails to comply with the pleading requirements of the  
16 Federal Rules of Civil Procedure (FRCP). The Court advises Plaintiff of the following  
17 requirements under the FRCP to facilitate the proper pleading of an amended complaint if  
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20 Fourteenth Amendment explicitly prohibits deprivations without due process by the  
21 several States.") Plaintiff has not alleged conduct against any federal actor.

22 <sup>5</sup> Plaintiff recites that this claim is also brought pursuant to the First Amendment. In  
23 screening prisoner complaints, the Court follows the instruction of the Supreme Court that  
24 "[t]he right of access to the courts . . . is founded in the Due Process Clause," *Wolff v.*  
25 *McDonnell*, 418 U.S. 539, 579 (1974), and considers such claims under the Fourteenth  
Amendment.

1 she elects to file one. Plaintiff is further advised that the failure to comply with these rules  
2 when drafting and filing an amended complaint may result in this action being dismissed.

3 **i. Federal Rules of Civil Procedure 8 and 10**

4 “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). “A  
5 party must state its claims or defenses in numbered paragraphs, each limited as far as  
6 practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b). “[E]ach claim  
7 founded on a separate transaction or occurrence . . . must be stated in a separate count.”  
8 *Id.* Plaintiff is cautioned that the function of a complaint is to notify Defendants of their  
9 acts for which she seeks to hold them liable. Her extensive conclusions and  
10 speculations, comprising most of her 47-page complaint, are neither simple nor direct  
11 statements of Defendant’s specific acts supporting her claims. Plaintiff need not list all  
12 acts every defendant’s act by every defendant. But, she must allege sufficient facts to  
13 support her conclusory allegations.

14 **ii. Federal Rules of Civil Procedure 18 and 20**

15 A basic lawsuit is a single claim against a single defendant. FRCP 18(a) allows a  
16 plaintiff to add multiple claims to the lawsuit when they are against the same defendant.  
17 FRCP 20(a)(2) allows a plaintiff to join multiple defendants to a lawsuit where the right to  
18 relief arises out of the same “transaction, occurrence, or series of transactions” and “any  
19 question of law or fact common to all defendants will arise in the action.” However,  
20 unrelated claims that involve different defendants must be brought in separate lawsuits.  
21 See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“[a] buckshot complaint that  
22 would be rejected if filed by a free person—say, a suit complaining that A defrauded the  
23 plaintiff, B defamed him, C punched him, D failed to pay a debt, and E infringed his  
24 copyright, all in different transactions—should be rejected if filed by a prisoner”). This rule

1 is not only intended to avoid confusion that arises out of bloated lawsuits, but also to  
2 ensure that inmates pay the required filing fees for their lawsuits and prevent inmates  
3 from circumventing the three strikes rule under the Prison Litigation Reform Act. 28  
4 U.S.C. § 1915(g).

5 I advise Plaintiff that each claim that is raised in her amended complaint must be  
6 permitted by either Rule 18 or Rule 20. Plaintiff may state a single claim against a single  
7 defendant. Plaintiff may then add any additional claims to her action that are against the  
8 same defendant under FRCP 18. Plaintiff may also add any additional claims against  
9 other defendants if those claims arise from the same transaction, occurrence, or series of  
10 transactions as her original claim. Fed. R. Civ. P. 20(a)(2). Plaintiff's conclusory  
11 assertion that her claims arise from the same transaction, occurrence, or series of  
12 transactions (ECF No. 1-1 at 13) does not cure this defect.

13 **B. Count 1: Retaliation in Violation of the First Amendment**

14 To state a viable First Amendment retaliation claim in the prison context, a plaintiff  
15 must allege: "(1) [a]n assertion that a state actor took some adverse action against an  
16 inmate (2) because of (3) that prisoner's protected conduct, and that such action (4)  
17 chilled the inmate's exercise of his First Amendment rights, and (5) the action did not  
18 reasonably advance a legitimate correctional goal." *Id.* at 567-68. Total chilling is not  
19 required; it is enough if an official's acts would chill or silence a person of ordinary  
20 firmness from future First Amendment activities. *Id.* at 568-69.

21 Plaintiff fails to state a cognizable First Amendment claim for retaliation. The  
22 fundamental defect to her claim is her failure to allege facts raising a permissible  
23 inference that she engaged in an act that is protected by the First Amendment. Plaintiff's  
24 repeated, and unsupported, conclusion that she engaged in protected conduct does not  
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1 cure this defect. Plaintiff's allegation that she worked in the prison's law library does not  
2 cure this defect as her employment is not protected by the First Amendment. While the  
3 Court assumes that Plaintiff might have engaged in protected conduct while employed in  
4 the prison law library, the mere fact of her employment does not meet Plaintiff's burden.  
5 She must allege facts showing the protected conduct that she alleges caused  
6 Defendant's adverse actions against her. As a result of this defect, Plaintiff has failed to  
7 allege facts permitting the inference that any adverse act by a state actor (to the extent  
8 she has properly alleged such adverse actions) was *because* Plaintiff engaged in  
9 protected conduct.

10 The Court notes, as one example of this defect, that Plaintiff alleges that Oliver,  
11 Holston and Peterson conducted a due process hearing which resulted in her being  
12 referred to a disciplinary hearing. This allegation raises a plausible inference that Oliver,  
13 Holston, and Peterson took an adverse action against Plaintiff. However, because  
14 Plaintiff has not alleged an act of protected conduct, she has failed to allege any facts  
15 suggesting these Defendants were even aware of Plaintiff's act of protected conduct.  
16 Plaintiff's burden, however, is to allege facts raising a plausible inference that these  
17 Defendants knew of Plaintiff's protected conduct and acted against Plaintiff *because* of  
18 that protected conduct. She has not met this burden as to any named Defendant in her  
19 complaint. The Court will dismiss Count 1 without prejudice with leave to amend.

20 **C. Count 2: Low Creatine in Plaintiff's Urine Sample.**

21 The Court liberally construes Count 2 as alleging claims arising during the  
22 disciplinary process resulting from the lab analysis that reported Plaintiff's urine sample  
23 had a low level of creatine.

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1 inmate's right to present witnesses may legitimately be limited by "the penological need to  
2 provide swift discipline in individual cases . . . [or] by the very real dangers in prison life  
3 which may result from violence or intimidation directed at either other inmates or staff."  
4 *Ponte v. Real*, 471 U.S. 491, 495 (1985). Jail officials "must make the decision whether  
5 to allow witnesses on a case-by-case basis, examining the potential hazards that may  
6 result from calling a particular person." *Serrano v. Francis*, 345 F.3d 1071, 1079 (9th Cir.  
7 2003). Despite this, an inmate has no right to cross-examine or confront witnesses in  
8 prison disciplinary hearings. See *Wolff*, 418 U.S. at 567-68.

9 "[T]he requirements of due process are satisfied if some evidence supports the  
10 decision by the prison disciplinary board." *Superintendent, Massachusetts Corr. Inst.*,  
11 *Walpole v. Hill*, 472 U.S. 445, 455 (1985). However, this standard does not apply when  
12 considering a due process claim brought against a prison guard for falsely accusing an  
13 inmate of a violation. *Hines v. Gomez*, 108 F.3d 265, 268 (9th Cir. 1997).

14 Plaintiff cannot maintain a due process claim to the extent that she may be alleging  
15 that her employment in the prison's law library was terminated because her urine sample  
16 had a low creatine level. Plaintiff does not have a protected interest in her prison  
17 employment. See *Collins v. Palczewski*, 841 F.Supp. 333, 336, 340 (D. Nev. 1993)  
18 (finding that neither the United States Constitution, Nevada statutory law, nor the state's  
19 prison administrative regulations create a protected liberty or property interest in prison  
20 employment).

21 Plaintiff's only allegation plausibly suggesting an infringement of a protected liberty  
22 interest was her placement in disciplinary segregation along with other sanctions.  
23 Plaintiff alleges that Sanchez and Trujillo conducted the March 12, 2020 disciplinary  
24 hearing that resulted in finding her guilty of the major violation and that imposed sanctions

1 for that violation. Plaintiff has alleged only one fact raising a plausible inference that  
2 Sanchez and Trujillo violated her due process right during the disciplinary hearing: she  
3 alleges she requested but was denied a retest of her urine sample. Whether these prison  
4 officials may be able to show they had a legitimate penological reason for limiting  
5 Plaintiff's efforts to defend herself is not a question to be resolved in screening the  
6 complaint.

7 For similar reasons, Plaintiff has alleged only one fact raising a plausible inference  
8 that H. Wickham violated her due process rights after the disciplinary hearing. Plaintiff  
9 has sufficiently alleged that she grieved the disciplinary action to Wickham on the basis  
10 that she was denied an opportunity to defend herself by having the urine sample retested,  
11 but that Wickham denied the appeal. The Court will allow Plaintiff's due process claim to  
12 proceed against Sanchez, Trujillo and Wickham arising from the denial of Plaintiff's  
13 request for a retest of her urine sample.

14 Plaintiff has not, however, alleged facts permitting a plausible inference that any  
15 other defendant violated a due process right afforded to inmates facing disciplinary  
16 charges. While prisoners have a due process right to not be falsely charged with a  
17 disciplinary violation, Plaintiff has not alleged any facts raising a plausible inference that  
18 she was falsely charged. Rather, she has alleged facts conceding that the charge was  
19 based on some evidence. She has alleged that the lab test reported a low creatine level  
20 in Plaintiff's urine sample. Plaintiff's asserted disagreement whether the result was  
21 reliable is irrelevant to her concession that a lab analysis reported that her urine sample  
22 had a low creatine level. Plaintiff's allegations that, prior to the disciplinary hearing,  
23 several Defendants denied her request for a retest also fail to state a due process claim.  
24 Plaintiff did not have a liberty interest in avoiding, or prematurely terminating, an

1 appropriate disciplinary process. Plaintiff's remaining allegations of fact concern acts  
2 ensuring that Plaintiff's due process rights were met, including notifying her of the charges  
3 against her. The Court will dismiss Plaintiff's Fourteenth Amendment due process claim  
4 against all other Defendants without prejudice with leave to amend.

5 **ii. Eighth Amendment – Cruel and Unusual Punishment**

6 Plaintiff also claims that the conduct alleged in Count 2 violates the Eighth  
7 Amendment cruel and unusual punishment clause. The cruel and unusual punishment  
8 clause "prohibits not only barbaric punishments, but also sentences that are  
9 disproportionate to the crime committed." *Solem v. Helm*, 463 U.S. 277, 284 (1983).  
10 Gross disproportionality is "applicable only in the 'exceedingly rare' and 'extreme' case."  
11 *Lockyer v. Andrade*, 538 U.S. 63, 72-73 (2003). Plaintiff has not alleged she was subject  
12 to any sanctions that could be considered grossly disproportionate to a major disciplinary  
13 violation. Rather, the sanctions alleged by Plaintiff in her complaint and indicated in the  
14 exhibits attached to her complaint is that Sanchez imposed a 45-day canteen sanction,  
15 which was extended to 52 days, that she was subject to a 45-day prohibition on using the  
16 phone, that she was placed in segregation, and then housed in a 12-person cell in the  
17 'jungle' after segregation. The Court is firmly convinced that, given Plaintiff's allegations of  
18 the sanctions that were imposed, she cannot amend her complaint to allege additional,  
19 but previously undisclosed, sanctions that establish her punishment for the MJ44 violation  
20 was grossly disproportionate. The Court will dismiss this Plaintiff's Eighth Amendment  
21 cruel and unusual punishment claim with prejudice as amendment would be futile.

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1                   **a. August 14, 2019, Incident.**

2           Plaintiff alleges that on August 14, 2019, Haralson and Moran removed and  
3 perused a book and a PTSD journal (authorized by Dr. Mabry, a psychologist) from her  
4 cell, that Baumgras moved the items to shift command, and that the journal ended up on  
5 Neven's desk. The claim is mis-joined to this action and must be dismissed as such  
6 without prejudice. Plaintiff's allegations establish that Count 2 arises from Plaintiff's low  
7 creatine urine sample that she provided in January 2020. Liberally construed, Count 1  
8 appears to be a claim that Defendants' conduct related to that disciplinary action was  
9 retaliatory. Plaintiff's allegations that Haralson and Moran, who are NOT named in either  
10 Count 1 or 2, removed and perused a book and journal from Plaintiff's cell on August 14,  
11 2019, are unrelated to the events in early January 2020 underlying Counts 1 and 2. The  
12 Court will dismiss this claim without prejudice but without leave to amend because it is not  
13 properly joined to this action.

14                   **b. Peterson Inquiries**

15           Plaintiff broadly and vaguely alleges Peterson made remarks and inquiries  
16 (apparently to her) about Plaintiff's emotional health. She further alleges she refused to  
17 provide him with confidential information. Peterson's act of asking Plaintiff about her  
18 mental health does not constitute a violation of her Fourteenth Amendment right to  
19 medical privacy. The Court will dismiss this claim with prejudice as amendment would be  
20 futile.

21                   **c. Neven and Garcia-Najere Interaction with Dr. Mabry**

22           Plaintiff alleges that, at some unknown time, Neven and Garcia-Najere asked Dr.  
23 Mabry to "justify" why she was seeing Plaintiff. Plaintiff offers no further allegations of fact  
24 regarding this incident that raises a plausible inference that either Defendant violated  
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1 Plaintiff's right to have medical information remain private. The Court will dismiss  
2 Plaintiff's Fourteenth Amendment claim arising from this incident without prejudice with  
3 leave to amend.

4 **d. Disclosures related to Plaintiff's MJ44 violation.**

5 Plaintiff alleges that Neven, Flores, Oliver, Sanchez, Nash, and Wickham violated  
6 her medical privacy on four occasions between January 20, and July 31, 2020 related to  
7 her low creatine urine sample. The broad allegation against Neven, Nash, and Wickham  
8 violates Rule 8 as Plaintiff has not alleged any fact as against these Defendants that  
9 arguably concerns her medically private information.

10 Plaintiff has alleged that Velesco, Currier, and Sanchez contacted FMWCC  
11 medical staff, and that Flores responded to Sanchez's inquiry, to determine whether  
12 Plaintiff was taking medications that could contribute to low creatine in Plaintiff's urine  
13 sample. Plaintiff has alleged Oliver inquired regarding Plaintiff's medications at the due  
14 process hearing for a similar reason. Plaintiff has alleged these Defendants disclosed or  
15 obtained medically private information. Plaintiff has also alleged facts, however, showing  
16 the government's legitimate penological interest in the medically private information that  
17 was disclosed. Plaintiff's urine sample had a low creatine level that would, if not excused  
18 for medical reasons, expose Plaintiff to a disciplinary sanction. Plaintiff has not alleged  
19 facts indicating that the medical information that was disclosed exceeded this legitimate  
20 purpose. Plaintiff's implicit argument that the disclosed information exceeded prison  
21 regulations is not relevant to whether the disclosed information was in violation of the  
22 Fourteenth Amendment. The Court will dismiss Plaintiff's medical privacy without  
23 prejudice with leave to amend to the extent it concerns the disclosure of medical  
24 information in relation to the low creatine level in her urine sample.

1                   **e. Supervisory Defendants**

2           Plaintiff states a broad, unsupported allegation against supervisory Defendants  
3 Daniels, Dzurenda, H. Wickham, T. Wickham, and Minev that they should have known of  
4 the violations of Plaintiff's medical privacy rights. The allegation is deficient under Rule 8,  
5 as Plaintiff does not allege facts permitting the Court to find that these Defendants will be  
6 placed on notice of the conduct for which Plaintiff seeks to hold them liable. The Court  
7 will dismiss Plaintiff's medical privacy claim against these supervisory Defendants without  
8 prejudice with leave to amend.

9                   **E. Counts 4 and 5: Denial of Access to Courts and Grievance Process**

10          Prisoners have a constitutional right of access to the courts. *Lewis v. Casey*, 518  
11 U.S. 343, 346 (1996). To establish a violation of the right of access to the courts, a  
12 prisoner must establish that he or she has suffered "actual injury," a jurisdictional  
13 requirement that flows from the standing doctrine and may not be waived. *Id.* at 349. An  
14 "actual injury" is "actual prejudice with respect to contemplated or existing litigation, such  
15 as the inability to meet a filing deadline or to present a claim." *Id.* at 348. The actual-  
16 injury requirement mandates that an inmate "demonstrate that a nonfrivolous legal claim  
17 had been frustrated or was being impeded." *Id.* at 353.

18          This right "requires prison authorities to assist inmates in the preparation and filing  
19 of meaningful legal papers by providing prisoners with adequate law libraries or adequate  
20 assistance from persons trained in the law." *Bounds v. Smith*, 430 U.S. 817, 828 (1977).  
21 This right, however, "guarantees no particular methodology but rather the conferral of a  
22 capability—the capability of bringing contemplated challenges to sentences or conditions  
23 of confinement before the courts." *Lewis*, 518 U.S. at 356. It is this "capability, rather  
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1 than the capability of turning pages in a law library, that is the touchstone” of the right of  
2 access to the courts. *Id.* at 356-57.

3 Delays in providing legal materials or assistance that result in actual injury are “not  
4 of constitutional significance” if “they are the product of prison regulations reasonably  
5 related to legitimate penological interests.” *Id.* at 362. The right of access to the courts is  
6 limited to non-frivolous direct criminal appeals, habeas corpus proceedings, and § 1983  
7 actions. *Id.* at 353 n.3, 354-55.

8 “The right of meaningful access to the courts extends to established prison  
9 grievance procedures.” *Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995), *overruled on*  
10 *other grounds by Shaw v. Murphy*, 532 U.S. 223, 230 n.2 (2001). “[T]he object of the  
11 denial-of-access suit, and the justification for recognizing that claim, is to place the  
12 plaintiff in a position to pursue a separate claim for relief once the frustrating condition has  
13 been removed.” *Christopher v. Harbury*, 536 U.S. 403, 413, (2002).

14 Plaintiff fails to state a cognizable claim either that she was denied access to the  
15 Courts or that she was denied access to FMWCC’s grievance process. The only  
16 allegation in Plaintiff’s complaint suggesting she might have suffered an actual injury is  
17 her allegation that she did not receive information regarding her criminal appeal that left  
18 Plaintiff without an attorney. Plaintiff does not, however, allege sufficient facts to permit a  
19 plausible inference that this event resulted in an “actual injury” in her criminal appeal.  
20 Rather, Plaintiff alleges that in April 2020, her newly appointed attorney obtained a court  
21 order requiring the prison to allow Plaintiff to have phone calls with the attorney.  
22 Similarly, Plaintiff alleges she missed two phone calls in August 2020. Plaintiff fails,  
23 however, to allege any facts raising a plausible inference that the missed phones calls  
24 resulted in actual prejudice to her criminal appeal. Plaintiff has not alleged any other  
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1 nonfrivolous legal claim underlying her request for relief for denial of access to the  
2 prison's grievance procedures or her access to the courts. The Court will dismiss both  
3 the access to the courts and access to the prison grievance procedure claims without  
4 prejudice with leave to amend.

5 **F. Count 6: Eighth Amendment Deliberate Indifference to Serious Medical Need**

6 The Eighth Amendment prohibits the imposition of cruel and unusual punishment  
7 and “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity,  
8 and decency.’” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the  
9 Eighth Amendment when he acts with “deliberate indifference” to the serious medical  
10 needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an  
11 Eighth Amendment violation, a plaintiff must satisfy both an objective standard—that the  
12 deprivation was serious enough to constitute cruel and unusual punishment—and a  
13 subjective standard—deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th  
14 Cir. 2012).

15 To establish the first prong, “the plaintiff must show a serious medical need by  
16 demonstrating that failure to treat a prisoner's condition could result in further significant  
17 injury or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091,  
18 1096 (9th Cir. 2006) (internal quotations omitted). To satisfy the deliberate indifference  
19 prong, a plaintiff must show “(a) a purposeful act or failure to respond to a prisoner's pain  
20 or possible medical need and (b) harm caused by the indifference.” *Id.* “Indifference may  
21 appear when prison officials deny, delay or intentionally interfere with medical treatment,  
22 or it may be shown by the way in which prison physicians provide medical care.” *Id.*  
23 (internal quotations omitted). When a prisoner alleges that delay of medical treatment  
24 evinces deliberate indifference, the prisoner must show that the delay led to further injury.

1 See *Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985)  
2 (holding that "mere delay of surgery, without more, is insufficient to state a claim of  
3 deliberate medical indifference").

4 **i. Eye Issues**

5 The Court must dismiss Plaintiff's serious medical needs claim to the extent it  
6 concerns delayed or canceled appointments for an eye exam with Defendant Dr. Leaks  
7 as improperly joined to this complaint. As previously noted, the fundamental claims to  
8 Plaintiff's complaint concern the disciplinary action against her arising from the low  
9 creatine levels in the urine sample that she provided in January 2020. Plaintiff's claims  
10 concerning the medical needs of her eyes predate this incident by several years and  
11 allege delays in appointments and Plaintiff's complaints about pain in and behind her right  
12 eye. Further, her allegations name only a single Defendant, Dr. Leaks, who is not named  
13 in any other claim in Plaintiff's complaint. The Court will dismiss Plaintiff's claim of  
14 deliberate indifference to serious medical needs concerning her eyes without prejudice  
15 but without leave to amend as improperly joined to this action.

16 **ii. Other Medical Issues**

17 Plaintiff fails to state a cognizable deliberate indifference to serious medical needs  
18 claim arising from any other medical issue. Plaintiff alleges that, when she was first  
19 transferred to segregation, she went without medication for about three weeks for a  
20 serious medical need. Plaintiff fails to allege any facts that this three-week period without  
21 medication caused her a further injury. Her general allegation that her condition was  
22 exacerbated does not cure this defect. Finally, Plaintiff fails to identify any Defendant  
23 who, knowing of Plaintiff's serious medical need, purposefully acted or failed to act to  
24 cause Plaintiff to not receive her medication. Similarly, Plaintiff's allegation that she has

1 been without medications to treat serious medical needs in the weeks before filing her  
2 complaint fails for the same reasons. She has not alleged who, knowing of her medical  
3 needs, caused her to not receive her medications. She has also failed to allege that the  
4 denial caused a further significant injury. The Court will dismiss Plaintiff's deliberate  
5 indifference to serious medical needs claim without prejudice with leave to amend. The  
6 Court advises Plaintiff, however, that this leave to amend is granted only to the extent that  
7 Plaintiff is able to allege such claims in compliance with the rules regarding proper joinder  
8 of claims.

### 9 **III. Leave to Amend**

10 Plaintiff is granted leave to file an amended complaint to cure the deficiencies of  
11 the complaint. If Plaintiff chooses to file an amended complaint, she is advised that an  
12 amended complaint entirely replaces the original complaint and, thus, the amended  
13 complaint must be complete. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*,  
14 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was named in the  
15 original complaint is irrelevant; an amended pleading supersedes the original"); *see also*  
16 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims  
17 dismissed with prejudice, a plaintiff is not required to reallege such claims in a  
18 subsequent amended complaint to preserve them for appeal). To be complete, an  
19 amended complaint must contain all claims, defendants, and factual allegations that a  
20 plaintiff wishes to pursue in his lawsuit. Moreover, an inmate should file the amended  
21 complaint on this Court's approved prisoner civil rights form, and it must be entitled "First  
22 Amended Complaint."

1 If Plaintiff chooses to file an amended complaint curing the deficiencies, as outlined  
2 in this order, Plaintiff must file the amended complaint within 30 days from the date of  
3 entry of this order.

4 If Plaintiff chooses to file an amended complaint, the Court will screen the  
5 amended complaint in a separate screening order. The screening process will take  
6 several months. If Plaintiff does not file an amended complaint curing the deficiencies  
7 outlined in this order, this action will immediately proceed exclusively against Defendants  
8 Sanchez, Trujillo, and H. Wickham on Plaintiff's Fourteenth Amendment due process  
9 claim arising from the denial of her request, in the disciplinary hearing, for a retest of her  
10 urine sample.

#### 11 **IV. Motion for Appointment of Counsel**

12 Plaintiff has filed a motion for appointment of counsel. ECF No. 1-4. A litigant  
13 does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights  
14 claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28  
15 U.S.C. § 1915(e)(1), "[t]he court may request an attorney to represent any person unable  
16 to afford counsel." However, the court will appoint counsel for indigent civil litigants only  
17 in "exceptional circumstances." *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§  
18 1983 action). "When determining whether 'exceptional circumstances' exist, a court must  
19 consider 'the likelihood of success on the merits as well as the ability of the petitioner to  
20 articulate his claims *pro se* in light of the complexity of the legal issues involved.'" *Id.*  
21 "Neither of these considerations is dispositive and instead must be viewed together." *Id.*  
22 In the instant case, the Court does not find exceptional circumstances that warrant the  
23 appointment of counsel. The Court denies the motion for appointment of counsel without  
24 prejudice.

1 **V. CONCLUSION**

2 Therefore,

3 THE COURT **ORDERS** that a decision on the application to proceed *in forma*  
4 *pauperis* (ECF No. 5) is DENIED as moot.

5 THE COURT FURTHER **ORDERS** that Plaintiff's Motion for Appointment of  
6 Counsel (ECF No. 1-4) is DENIED without prejudice.

7 THE COURT FURTHER **ORDERS** that the Clerk of the Court shall file the  
8 complaint (ECF 1-1, along with attachments ECF No. 1-2 and 1-3).

9 THE COURT FURTHER **ORDERS** that:


- 10 • Plaintiff's First Amendment – Retaliation claim in Count 1 is DISMISSED  
11 without prejudice with leave to amend;
- 12 • Plaintiff's Fourteenth Amendment – Due Process claim in Count 2 may  
13 proceed as against Defendants Sanchez, Trujillo, and H. Wickham and is  
14 DISMISSED as against all other Defendants without prejudice with leave to  
15 amend.
- 16 • Plaintiff's Eighth Amendment - Cruel and Unusual Punishment claim in  
17 Count 2 is DISMISSED with prejudice as amendment would be futile;
- 18 • Plaintiff's HIPAA in Count 3 is DISMISSED with prejudice as amendment  
19 would be futile;
- 20 • Plaintiff's Fourteenth Amendment – Medical Privacy claim in Count 3 arising  
21 from the August 14, 2019 incident is DISMISSED without prejudice but  
22 without leave to amend as improperly joined;



1 THE COURT FURTHER **ORDERS** that, if Plaintiff chooses to file an amended  
2 complaint, the Court will screen the amended complaint in a separate screening order.  
3 The screening process will take several months.

4 THE COURT FURTHER **ORDERS** that, if Plaintiff does not file an amended  
5 complaint curing the deficiencies outlined in this order, this action will be immediately  
6 proceed exclusively against Defendants Sanchez, Trujillo, and H. Wickham on Plaintiff's  
7 Fourteenth Amendment due process claim arising from the denial of her request, in the  
8 disciplinary hearing, for a retest of her urine sample.

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10  
11 DATED THIS 7 of July 2021.

  
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Gloria M. Navarro  
United States District Judge